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11
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 FOR THE CITY AND COUNTY OF SAN FRANCISCO
14 UNLIMITED CIVIL JURISDICTION

15 RUSSELL BRIMER,

16 Plaintiff,

17 v.

18 PROVO CRAFT & NOVELTY, INC.; and
19 DOES 1 through 150, inclusive,

20 Defendants.

Case No. CGC-11-516509

COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF

(Cal. Health & Safety Code § 25249.6 et seq.)

ENDORSED
FILED
SAN FRANCISCO COUNTY
SUPERIOR COURT
2011 DEC -9 AM 1:09
CLERK OF COURT
BY: ELIAS BUTZ
DEPUTY CLERK

BY FAX

NATURE OF THE ACTION

1
2 1. This Complaint is a representative action brought by plaintiff RUSSELL
3 BRIMER, in the public interest of the citizens of the state of California, to enforce the People’s
4 right to be informed of the presence di(2-ethylhex)phthalate (“DEHP”), a toxic chemical found
5 in storage binders sold in California.

6 2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failures to
7 warn California citizens about their exposures to DEHP, present in certain storage binders that
8 defendants import, manufacture, distribute, and/or offer for sale to consumers throughout the
9 state of California.

10 3. High levels of DEHP are commonly found in storage binders that defendants
11 manufacture, distribute, and/or offer for sale to consumers throughout the State of California.

12 4. Under California’s Safe Drinking Water and Toxic Enforcement Act of 1986,
13 California Health & Safety Code § 25249.6 et seq. (“Proposition 65”), “No person in the course
14 of doing business shall knowingly and intentionally expose any individual to a chemical known
15 to the state to cause cancer or reproductive toxicity without first giving clear and reasonable
16 warning to such individual. . . .” (*Cal. Health & Safety Code § 25249.6.*)

17 5. On October 24, 2003, California identified and listed DEHP as a chemical known
18 to cause birth defects and other reproductive harm. DEHP became subject to the “clear and
19 reasonable warning” requirements of Proposition 65 one year later on October 24, 2004. (*27*
20 *CCR Section 27001(c); Cal. Health & Safety Code Sections 25249.8 & 25249.10(b).*)

21 6. DEHP shall hereinafter be referred to as the “LISTED CHEMICAL.”

22 7. For purposes of this Complaint, Defendants import, manufacture, distribute,
23 and/or sell the *Cuttlebug Storage Binder, #37-1575 (#0 93573 41575 7)* containing excessive
24 levels of the LISTED CHEMICAL. The *Cuttlebug Die and Embossing Folder Storage, #37-*
25 *1575 (#0 93573 41575 7)* shall hereinafter be referred to as the “PRODUCTS.”

26 8. Defendants’ failures to warn consumers and/or other individuals in the state of
27 California about their exposures to the LISTED CHEMICAL in conjunction with defendants’
28

1 sales of the PRODUCTS is a violation of Proposition 65 and subjects defendants to enjoinder
2 of such conduct as well as civil penalties for each such violation.

3 9. As a result of defendants' violations of Proposition 65, plaintiff seeks preliminary
4 injunctive and permanent injunctive relief to compel defendants to provide purchasers or users
5 of the PRODUCTS with the required warnings regarding the health hazards of the LISTED
6 CHEMICAL in the PRODUCTS. (*Cal. Health & Safety Code § 25249.7(a).*)

7 10. Plaintiff also seeks civil penalties against defendants for their violations of
8 Proposition 65, as provided for by California Health & Safety Code § 25249.7(b).

9 **PARTIES**

10 11. Plaintiff RUSSELL BRIMER, is a citizen of the state of California who is
11 dedicated to protecting the health of California citizens through the elimination or reduction of
12 toxic exposures from consumer products, and brings this action in the public interest pursuant to
13 California Health & Safety Code § 25249.7.

14 12. Defendant PROVO CRAFT & NOVELTY, INC. ("PROVO CRAFT") is a person
15 doing business within the meaning of California Health & Safety Code § 25249.11.

16 13. Defendant PROVO CRAFT imports, manufactures, distributes, and/or offers the
17 PRODUCTS for sale or use in the state of California or implies by its conduct that it imports,
18 manufactures, distributes, and/or offers the PRODUCTS for sale or use in the state of
19 California.

20 14. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each
21 persons doing business within the meaning of California Health & Safety Code § 25249.11.

22 15. MANUFACTURER DEFENDANTS engage in the process of research, testing,
23 designing, assembling, fabricating and/or manufacturing, or imply by their conduct that they
24 engage in the process of research, testing, designing, assembling, fabricating and/or
25 manufacturing, one or more of the PRODUCTS for sale or use in the state of California.

26 16. Defendants DOES 51-100 ("DISTRIBUTOR DEFENDANTS") are each persons
27 doing business within the meaning of California Health & Safety Code § 25249.11.

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1 17. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process and/or
2 transport the PRODUCTS to individuals, businesses or retailers for sale or use in the state of
3 California.

4 18. Defendants DOES 101-150 (“RETAILER DEFENDANTS”) are each persons
5 doing business within the meaning of California Health & Safety Code § 25249.11.

6 19. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the
7 state of California.

8 20. At this time, the true names of Defendants DOES 1 through 150, inclusive, are
9 unknown to plaintiff, who therefore sues said defendants by their fictitious name pursuant to
10 Code of Civil Procedure § 474. Plaintiff is informed and believes, and on that basis alleges, that
11 each of the fictitiously named defendants is responsible for the acts and occurrences herein
12 alleged. When ascertained, their true names shall be reflected in an amended complaint.

13 21. PROVO CRAFT, MANUFACTURER DEFENDANTS, DISTRIBUTOR
14 DEFENDANTS, and RETAILER DEFENDANTS shall, where appropriate, collectively be
15 referred to hereinafter as “DEFENDANTS”.

16 **VENUE AND JURISDICTION**

17 22. Venue is proper in the San Francisco Superior Court, pursuant to Code of Civil
18 Procedure §§ 394, 395, and 395.5, because this Court is a court of competent jurisdiction,
19 because one or more instances of wrongful conduct occurred, and continues to occur, in the
20 County of San Francisco and/or because DEFENDANTS conducted, and continue to conduct,
21 business in this county with respect to the PRODUCTS.

22 23. The California Superior Court has jurisdiction over this action pursuant to
23 California Constitution Article VI, Section 10, which grants the Superior Court “original
24 jurisdiction in all causes except those given by statute to other trial courts.” The statute under
25 which this action is brought does not specify any other basis of subject matter jurisdiction.

26 24. The California Superior Court has jurisdiction over DEFENDANTS based on
27 plaintiff’s information and good faith belief that each defendant is a person, firm, corporation or
28 association that either are citizens of the state of California, have sufficient minimum contacts in

1 the state of California, or otherwise purposefully avail themselves of the California market.
2 DEFENDANTS' purposeful availment renders the exercise of personal jurisdiction by
3 California courts consistent with traditional notions of fair play and substantial justice.

4 **FIRST CAUSE OF ACTION**

5 **(Violation of Proposition 65 - Against All Defendants)**

6 25. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
7 Paragraphs 1 through 24, inclusive.

8 26. The citizens of the state of California have expressly stated in the Safe Drinking
9 Water and Toxic Enforcement Act of 1986, California Health & Safety Code § 25249.5 et seq.
10 that they must be informed "about exposures to chemicals that cause cancer, birth defects and
11 other reproductive harm." (*Cal. Health & Safety Code § 25249.6.*)

12 27. Proposition 65 states, "No person in the course of doing business shall knowingly
13 and intentionally expose any individual to a chemical known to the state to cause cancer or
14 reproductive toxicity without first giving clear and reasonable warning to such individual..."
15 (*Id.*)

16 28. On or about September 1, 2011, Brimer issued a sixty-day notice of violation,
17 together with the requisite Certificate of Merit, to PROVO CRAFT and various public
18 enforcement agencies stating that as a result of the DEFENDANTS' sales of the PRODUCTS,
19 purchasers and users in the state of California were being exposed to the LISTED CHEMICAL
20 resulting from the reasonably foreseeable uses of the PRODUCTS, without the individual
21 purchasers and users first having been provided with a "clear and reasonable warning"
22 regarding such toxic exposures.

23 29. DEFENDANTS have engaged in the importation, manufacture, distribution,
24 and/or offering of the PRODUCTS for sale or use in violation of California Health & Safety
25 Code § 25249.6, and DEFENDANTS' importation, manufacture, distribution, and/or offering of
26 the PRODUCTS for sale or use in violation of California Health & Safety Code § 25249.6 has
27 continued to occur beyond DEFENDANTS' receipt of plaintiff's sixty-day notices of violation.
28 Plaintiff further alleges and believes that such violations will continue to occur into the future.

1 30. After receipt of the claims asserted in the sixty-day notices of violation, the
2 appropriate public enforcement agencies have failed to commence and diligently prosecute a
3 cause of action against DEFENDANTS under Proposition 65.

4 31. The PRODUCTS imported, manufactured, distributed, and/or offered for sale or
5 use in California by DEFENDANTS contained the LISTED CHEMICAL above the allowable
6 State limit.

7 32. DEFENDANTS knew or should have known that the PRODUCTS imported,
8 manufactured, distributed, and/or offered for sale or use by DEFENDANTS in California
9 contained the LISTED CHEMICAL.

10 33. The LISTED CHEMICAL was present in or on the PRODUCTS in such a way as
11 to expose individuals to the LISTED CHEMICAL through dermal contact and/or ingestion
12 during the reasonably foreseeable use of the PRODUCTS.

13 34. The normal and reasonably foreseeable use of the PRODUCTS has caused and
14 continues to cause consumer exposures to the LISTED CHEMICAL, as such exposure is
15 defined by 27 CCR § 25602(b).

16 35. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of
17 the PRODUCTS would expose individuals to the LISTED CHEMICAL through dermal contact
18 and/or ingestion.

19 36. DEFENDANTS intended that such exposures to the LISTED CHEMICAL from
20 the reasonably foreseeable use of the PRODUCTS would occur by their deliberate, non-
21 accidental participation in the importation, manufacture, distribution, and/or offer for sale or use
22 of PRODUCTS to individuals in the state of California.

23 37. DEFENDANTS failed and continue to fail to provide a “clear and reasonable
24 warning” to those consumers and/or other individuals in the state of California who were or who
25 could become exposed to the LISTED CHEMICAL through dermal contact and/or ingestion
26 during the reasonably foreseeable use of the PRODUCTS.

27 38. Contrary to the express policy and statutory prohibition of Proposition 65, enacted
28 directly by California voters, individuals exposed to the LISTED CHEMICAL through dermal

1 contact and/or ingestion resulting from the reasonably foreseeable use of the PRODUCTS, sold
2 by DEFENDANTS without a "clear and reasonable warning", have suffered, and continue to
3 suffer, irreparable harm, for which harm they have no plain, speedy or adequate remedy at law.

4 39. As a consequence of the above-described acts, DEFENDANTS, and each of them,
5 are liable for a maximum civil penalty of \$2,500 per day for each violation pursuant to
6 California Health & Safety Code § 25249.7(b).

7 40. As a consequence of the above-described acts, California Health & Safety Code
8 § 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
9 DEFENDANTS.

10 **PRAYER FOR RELIEF**

11 Wherefore, plaintiff prays for judgment against DEFENDANTS as follows:

12 1. That the Court, pursuant to California Health & Safety Code § 25249.7(b), assess
13 civil penalties against DEFENDANTS in the amount of \$2,500 per day for each violation
14 alleged herein;

15 2. That the Court, pursuant to California Health & Safety Code § 25249.7(a),
16 preliminarily and permanently enjoin DEFENDANTS from importing, manufacturing,
17 distributing, and/or offering the PRODUCTS for sale or use in California, without providing
18 "clear and reasonable warnings" as defined by 27 CCR § 25601, as to the harms associated with
19 exposures the LISTED CHEMICAL;

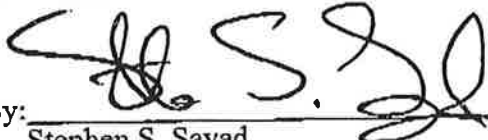
20 3. That the Court grant plaintiff his reasonable attorneys' fees and costs of suit; and

21 4. That the Court grant such other and further relief as may be just and proper.

22 Dated: December 9, 2011

Respectfully submitted,

THE CHANLER GROUP

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25 By: Stephen S. Sayad
26 Attorneys for Plaintiff
27 RUSSELL BRIMER
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